

⁶ See *id.* at App. A.

Decision-Making” as defined in the *Protective Order*.⁷ Outside Counsel and an Outside Consultant to Pay Tel Communications, Inc. (Pay Tel) previously filed Acknowledgements of Confidentiality pursuant to the *Protective Order*.⁸ On July 17, 2014 Securus Technologies, Inc. (Securus) submitted confidential data (Cost Study Documents) in this proceeding pursuant to the *Protective Order*.⁹ Securus simultaneously filed a Request for Confidential Treatment.¹⁰

3. Securus objects to a request by Pay Tel Outside Counsel to receive its unredacted Cost Study Documents because the “confidential information in those documents is competitively sensitive and must not be provided to Pay Tel, a direct competitor of Securus.”¹¹ Securus asserts that if Pay Tel’s Outside Counsel receives these documents, Securus will suffer “substantial and irreparable harm.”¹²

4. In response, Pay Tel notes that “Securus has presented no explanation of why the Protective Order does not apply in this circumstance or why it should not be subject to its terms.”¹³ Pay Tel further provides a sworn declaration from its President that Outside Counsel do not “represent Pay Tel or provide counsel to Pay Tel with respect to competitive decision-making within the meaning of the Protective Order issued in this proceeding.”¹⁴ Pay Tel also argues that “Securus cannot be permitted, on the one hand, to use its cost data to advance its advocacy in this proceeding and then, on the other hand, deny other parties the opportunity to review and evaluate the basis upon which these arguments are advanced.”¹⁵

II. DISCUSSION

5. The record does not provide any reason to deny Pay Tel’s Outside Counsel access to the Cost Study Documents consistent with the terms of the *Protective Order*.¹⁶ Securus argues that Pay Tel’s Outside Counsel is involved in Competitive Decision-Making pursuant to the *Protective Order*. Securus

⁷ *Id.* at 16954-55, para. 2 (“‘Competitive Decision-Making’ means a person’s activities, association, or relationship with any of its clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party.”).

⁸ See Letter from Timothy G. Nelson, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at Attach. (filed Jan. 17, 2014) (Pay Tel Outside Counsel Acknowledgements of Confidentiality); *see also* Letter from Timothy G. Nelson, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at Attach. (filed July 31, 2014) (Pay Tel Outside Consultant Acknowledgment of Confidentiality).

⁹ Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed July 17, 2014) (attaching redacted Cost Study Documents) (Cost Study Documents).

¹⁰ Securus Technologies, Inc. Objection to Disclosure of Confidential Information, WC Docket No. 12-375, at Attach. A (filed Aug. 6, 2014) (Securus Objection) (attaching copy of previously filed Request for Confidential Treatment).

¹¹ *See id.* at 1; *see also generally* Securus Technologies, Inc. Reply in Support of Objection to Disclosure of Confidential Information, WC Docket No. 12-375 (filed Aug. 15, 2014) (Securus Objection Reply).

¹² Securus Objection at 3.

¹³ *See* Pay Tel Communications, Inc. Response to Securus Technologies, Inc.’s Objection to Disclosure of Confidential Information, WC Docket No. 12-375, at 7 (filed Aug. 8, 2014) (Pay Tel Response); *see also generally* Pay Tel Communications, Inc. Supplemental Response to Securus Technologies, Inc.’s Objection to Disclosure of Confidential Information, WC Docket No. 12-375 (filed Aug. 19, 2014) (Pay Tel Supplemental Response).

¹⁴ Pay Tel Supplemental Response at Attach.

¹⁵ Pay Tel Response at 5.

¹⁶ We note that unlike with Outside Counsel, Securus has offered to provide the Cost Study Documents to Pay Tel’s Outside Consultant. *See* Securus Objection at 1. However, 18 days after the data were requested, Securus had not yet done so. *See* Pay Tel Supplemental Response at 3.

attempts to support this argument with assertions that “Pay Tel is a small company with no in-house attorneys” and “Pay Tel has only 20-49 employees.”¹⁷ Securus further claims that Pay Tel’s “chief Outside Counsel, Marcus Trathen, acts as Pay Tel’s General Counsel and has introduced himself publicly as such,”¹⁸ and that Pay Tel’s “Outside Counsel is not so distanced from Pay Tel as the outside counsel to other companies may be.”¹⁹

6. Pay Tel responds that its request “is fully compliant with the terms of the Protective Order and Securus has presented no explanation of why the Protective Order does not apply in this circumstance or why it should not be subject to its terms.”²⁰ Pay Tel asserts that its “counsel are not ‘competitors’ of Securus nor are they involved in ‘competitive decision making’ on its behalf.”²¹ Pay Tel’s President declares that Marcus Trathen, the attorney in question, does not “represent Pay Tel or provide counsel to Pay Tel with respect to competitive decision-making within the meaning of the Protective Order issued in this proceeding,” and “has never been engaged by Pay Tel as Pay Tel’s General Counsel.”²² In fact, Pay Tel’s declaration indicates that it employs additional counsel for corporate, litigation and patent matters.²³ Pay Tel’s Outside Counsel submitted Acknowledgements of Confidentiality pursuant to the requirements of the *Protective Order*, which includes a certification of a lack of involvement in Competitive Decision-Making.²⁴

7. Securus’ statements do not persuade us that Pay Tel’s Outside Counsel are involved in Competitive Decision-Making as defined by the *Protective Order*. They are unsupported assertions, which Pay Tel has rebutted with a sworn declaration from its President that its Outside Counsel are not involved in Competitive Decision-Making.²⁵ In addition to being unsupported assertions, Securus’ statements, even if true, would not necessarily lead us to conclude that the counsel in question should not have access to the documents: under the terms of the *Protective Order*, In-House Counsel are also permitted access to the documents so long as, like Outside Counsel and Outside Consultants, they are not involved in Competitive Decision-Making.²⁶ We conclude that Pay Tel’s request falls squarely within the confines of the *Protective Order* and is governed by the terms of that document. The terms of the *Protective Order* provide ample protection for Securus’ data.

8. We also address Securus’ separate Request for Confidential Treatment. As explained in the *Protective Order*, when a Submitting Party²⁷ “designat[es] documents and information as Confidential under [the] Protective Order, a Submitting Party will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules.”²⁸ As such, we grant in part Securus’ Request for Confidential Treatment filed concurrently with its Cost Study Documents to the extent it asks that the materials not be made routinely available for public inspection,

¹⁷ Securus Objection Reply at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Pay Tel Response at 7.

²¹ *Id.* at 3.

²² Pay Tel Supplemental Response at Attach.

²³ *See id.*

²⁴ *See* Pay Tel Outside Counsel Acknowledgements of Confidentiality.

²⁵ Securus Objection Reply at 2; Pay Tel Supplemental Response at Attach.

²⁶ *See Protective Order*, 28 FCC Rcd at 16954-55, para. 2.

²⁷ “‘Submitting Party’ means a person or entity who submits a Stamped Confidential Document.” *Protective Order*, 28 FCC Rcd at 16954-55, para. 2.

²⁸ *Id.* at 16955, para. 3 (citing 47 C.F.R. § 0.459(a), 0.459(a)(3)).

and deny it in part to the extent that it seeks to make them unavailable under the *Protective Order*. We reiterate the conclusion of the *Protective Order* that it properly balances the need to protect sensitive information with the right of the public to meaningfully participate in this proceeding, and that it thereby serves the public interest.²⁹ Additionally, Securus requests that the Commission not disclose its Cost Study Documents to Pay Tel's Outside Counsel.³⁰ We make clear that, pursuant to the *Protective Order*, it is the Submitting Party that provides the confidential information to the requesting party, not the Commission staff.³¹ For the foregoing reasons, we deny Securus' objection and direct Securus to provide the requested data to Pay Tel's Outside Counsel within three business days of the release date above.³² Copies of this Order will be transmitted to Securus and its outside counsel by electronic mail.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 5, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155, and 303(r), and sections 0.91, 0.201(d), and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), and 0.291, the Securus Technologies, Inc. Objection to Disclosure of Confidential Information, filed on August 6, 2014, IS DENIED.

10. IT IS FURTHER ORDERED that Securus' Request for Confidential Treatment is GRANTED IN PART and DENIED IN PART as discussed above.

11. IT IS FURTHER ORDERED that Securus MUST COMPLY with the terms of the *Protective Order* in this docket and provide Outside Counsel to Pay Tel Communications, Inc. the requested confidential data no later than October 6, 2014.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

²⁹ Cf. 47 C.F.R. 0.461(f)(4) (Commission will weigh considerations favoring disclosure and non-disclosure and may conditionally grant or deny request for release of records under the Freedom of Information Act).

³⁰ See Securus Objection at 5; Securus Objection Reply at 5 (both requesting that the Commission not disclose to Pay Tel or its Outside Counsel Securus' Cost Study Documents).

³¹ See *Protective Order*, 28 FCC Rcd at 16956, para. 6.

³² "Until any objection is resolved by the Commission and, if appropriate, by any court of competent jurisdiction, and unless such objection is resolved in favor of the person seeking access, a person subject to an objection from a Submitting Party shall not have access to the relevant Stamped Confidential Documents." *Id.* at 16956, para. 5.